RECORD AND BRIEFS

Supreme Court, U.S.
FILED
MAR - 6 2016
OFFICE OF THE CLERK

No. 16-405

In the Supreme Court of the United States

BNSF RAILWAY CO., PETITIONER

v.

KELLI TYRRELL, SPECIAL ADMINISTRATOR FOR THE ESTATE OF BRENT T. TYRRELL, DECEASED, ET AL.

ON WRIT OF CERTIORARI TO THE SUPREME COURT OF MONTANA

BRIEF FOR THE UNITED STATES AS AMICUS CURIAE SUPPORTING PETITIONER

NOEL J. FRANCISCO
Acting Solicitor General
Counsel of Record
CHAD A. READLER
Acting Assistant Attorney General
EDWIN S. KNEEDLER
Deputy Solicitor General
NICOLE A. SAHARSKY
Assistant to the Solicitor General
MICHAEL S. RAAB
JOSEPH F. BUSA
Attorneys

Department of Justice
Washington, D.C. 20530-0001
SupremeCtBriefs@usdoj.gov
(202) 514-2217

QUESTIONS PRESENTED

1. Whether a provision of the Federal Employers' Liability Act, 45 U.S.C. 56, authorizes a state court adjudicating a claim under that Act to exercise personal jurisdiction over a non-resident defendant that is doing business in the State.

2. Whether the Montana courts' exercise of personal jurisdiction over petitioner, a railroad incorporated in Delaware with its principal place of business in Texas, in an action based on injuries incurred outside the State, violates due process.

TABLE OF CONTENTS

Page

Interest of the United States 1
Statement 2
Summary of argument 6
Argument:
I. The Federal Employers' Liability Act does not confer authority on state courts to exercise personal jurisdiction over any defendant doing business in the State 8
A. The text of Section 56 does not affirmatively authorize a state court to assert personal jurisdiction over a defendant 9
B. The history of Section 56 confirms that the provision does not address personal jurisdiction 14
C. This Court's decisions do not hold that Section 56 affirmatively authorizes a state court to exercise personal jurisdiction over a defendant doing business in the State 18
D. Montana law, not the FELA, is the source of the Montana courts' authority to assert personal jurisdiction over petitioner in this case 23
II. The Montana courts' assertion of general personal jurisdiction over petitioner based on the state long-arm statute violates the Due Process Clause of the Fourteenth Amendment 24
A. *Goodyear* and *Daimler* define the due-process constraints on state courts' exercise of general personal jurisdiction over out-of-state defendants 25
B. The Montana courts' exercise of general personal jurisdiction over petitioner violates due process 29

Table of Contents—Continued: Page

Conclusion 33
Appendix — Constitutional and statutory provisions and rules 1a

TABLE OF AUTHORITIES

Cases:

Asahi Metal Indus. Co. v. *Superior Court of Cal.*, 480 U.S. 102 (1987) 32
Baltimore & Ohio R.R. v. *Kepner*, 314 U.S. 44 (1941) 10, 11, 14, 15, 17, 20
Barrett v. *Union Pac. R.R.*, 361 Or. 115 (2017) 12, 31
Burger King Corp. v. *Rudzewicz*, 471 U.S. 462 (1985) 25
Collett, Ex parte, 337 U.S. 55 (1949) 11
Cound v. *Atchison, T. & S.F. Ry. Co.*, 173 F. 527 (C.C.W.D. Tex. 1909) 15
Daimler AG v. *Bauman*, 134 S. Ct. 746 (2014) ..... *passim*
Denver & Rio Grande W. R.R. v. *Terte*, 284 U.S. 284 (1932) 18, 19, 22
Goodyear Dunlop Tires Operations, S.A. v. *Brown*, 564 U.S. 915 (2011) 2, 3, 7, 26, 28
Helicopteros Nacionales de Colombia, S.A. v. *Hall*, 466 U.S. 408 (1984) 2, 26
Hoffman v. *Missouri ex rel. Foraker*, 274 U.S. 21 (1927) 19
Hoxie v. *New York, N. H. & H. R. Co.*, 73 A. 754 (Conn. 1909) 15
International Shoe Co. v. *Washington*, 326 U.S. 310 (1945) 2, 25
J. McIntyre Mach., Ltd. v. *Nicastro*, 564 U.S. 873 (2011) 31, 32
Leroy v. *Great W. United Corp.*, 443 U.S. 173 (1979) 12

Cases—Continued: Page

Macon Grocery Co. v. *Atlantic Coast Line R.R.*, 215 U.S. 501 (1910) 15
McKnett v. *St. Louis & S.F. Ry. Co.*, 292 U.S. 230 (1934) 22
Michigan Cent. R.R. v. *Mix*, 278 U.S. 492 (1929) 19
Miles v. *Illinois Cent. R.R.*, 315 U.S. 698 (1942) 16, 20, 21, 22
Mississippi Publishing Corp. v. *Murphree*, 326 U.S. 438 (1946) 9, 10
Mondou v. *New York, New Haven & Hartford R.R. (Second Employers' Liability Cases)*, 223 U.S. 1 (1912) 11, 16, 22
Norfolk S. Ry. Co. v. *Sorrell*, 549 U.S. 158 (2007) 1
Omni Capital Int'l, Ltd. v. *Rudolf Wolff & Co.*, 484 U.S. 97 (1987) ..... *passim*
Perkins v. *Benguet Consol. Mining Co.*, 342 U.S. 437 (1952) 29, 30
Pope v. *Atlantic Coast Line R.R.*, 345 U.S. 379 (1953) 17, 21, 22
Ruhrgas AG v. *Marathon Oil Co.*, 526 U.S. 574 (1999) 23
Southland Corp. v. *Keating*, 465 U.S. 1 (1984) 11
State ex rel. Norfolk S. Ry. Co. v. *Dolan*, No. SC95514, 2017 WL 770977 (Mo. Feb. 28, 2017) 12, 31
Steel Co. v. *Citizens for a Better Env't*, 523 U.S. 83 (1998) 23
Tackett v. *Duncan*, 334 P.3d 920 (Mont. 2014) 23
World-Wide Volkswagen Corp. v. *Woodson*, 444 U.S. 286 (1980) 25

Constitution, statutes and rules—Continued: Page

U.S. Const.:
Art. I, § 8, Cl. 3 (Commerce Clause) 19, 21, 32
Amend. V (Due Process Clause) 28, 32
Amend. XIV (Due Process Clause) ..... *passim*, 1a
Act of Apr. 22, 1908, ch. 149, § 6, 35 Stat. 66 14
Act of Apr. 5, 1910, ch. 143, § 1, 36 Stat. 291 ..... 14, 16
Act of Mar. 3, 1911, ch. 231, § 291, 36 Stat. 1167 14
Act of June 25, 1948, ch. 646, 62 Stat. 869:
§ 1, 62 Stat. 939 16
§ 18, 62 Stat. 989 16
Clayton Act, ch. 323, 38 Stat. 730 (15 U.S.C. 12 *et seq.*):
§ 12, 38 Stat. 736 13
15 U.S.C. 22 13
Commodity Exchange Act, 7 U.S.C. 25(c) (1982) 10
Employee Retirement Income Security Act of 1974, 29 U.S.C. 1132(e)(2) 13
False Claims Act, 31 U.S.C. 3732 13
Federal Employers' Liability Act, 45 U.S.C. 51 *et seq.* 1, 6
45 U.S.C. 51 ..... 1, 1a
45 U.S.C. 56 (§ 6) ..... *passim*, 2a
Racketeer Influenced and Corrupt Organizations Act, 18 U.S.C. 1965(d) 13
Securities Act of 1933, 15 U.S.C. 77v(a) 13
Securities Exchange Act of 1934, 15 U.S.C. 78aa(a) 13
15 U.S.C. 53 13
28 U.S.C. 1404(a) 21
28 U.S.C. 1445(a) 16

Rules—Continued: Page

Fed. R. Civ. P.:

Rule 4 9

Rule 4.1 9

Rule 4(k)(1)(A) 24, 3a

Mont. R. Civ. P.:

Rule 4(a)(3) 23, 3a

Rule 4(b)(1) 5, 23, 4a

Miscellaneous:

Black's Law Dictionary (10th ed. 2014) 9, 12

45 Cong. Rec. (1910):

p. 2253 17

pp. 2253-2254 16

p. 2257 17

p. 3995 16

p. 4034 ..... 18, 20

H.R. 1639, 80th Cong., 1st Sess. (1947) 17

H.R. Rep. No. 513, 61st Cong., 2d Sess. (1910) 15, 16

S. Rep. No. 432, 61st Cong., 2d Sess. (1910) 15, 16, 18

In the Supreme Court of the United States

No. 16-405

BNSF RAILWAY CO., PETITIONER

v.

KELLI TYRRELL, SPECIAL ADMINISTRATOR FOR THE ESTATE OF BRENT T. TYRRELL, DECEASED, ET AL.

ON WRIT OF CERTIORARI TO THE SUPREME COURT OF MONTANA

BRIEF FOR THE UNITED STATES AS AMICUS CURIAE SUPPORTING PETITIONER

INTEREST OF THE UNITED STATES

This case involves a state court's assertion of general personal jurisdiction over an out-of-state corporation to adjudicate a cause of action under the Federal Employers' Liability Act (FELA), 45 U.S.C. 51 *et seq.* The FELA provides a federal cause of action for injured railroad workers to sue their employers for negligence. See 45 U.S.C. 51; see also, *e.g.*, *Norfolk S. Ry. Co.* v. *Sorrell*, 549 U.S. 158, 165 (2007). Although courts (rather than federal agencies) administer the FELA, 45 U.S.C. 51, the United States has an interest in ensuring that the FELA is interpreted correctly in order to promote the safe, economic, and efficient operation of the national railway system. Further, federal agencies administer other federal statutes that use language similar to that found in 45 U.S.C. 56, and the United States has an interest in ensuring that those

statutes are interpreted correctly. Finally, the United States has an interest in the due-process limitations on state court exercises of personal jurisdiction over out-of-state corporations because of the potential effects of such rules on interstate and foreign commerce.

STATEMENT

1. In order for a state court to lawfully exercise personal jurisdiction over a defendant in a civil suit, two requirements must be met.

First, the defendant must be amenable to service of summons. *Omni Capital Int'l, Ltd.* v. *Rudolf Wolff & Co.*, 484 U.S. 97, 104 (1987) (*Omni*). "Absent consent," a defendant is amenable to service of summons only where there is a law affirmatively "authoriz[ing] * * * service of summons on the defendant." *Ibid.*

Second, the state court's exercise of personal jurisdiction over the defendant must comport with due process. *Goodyear Dunlop Tires Operations, S.A.* v. *Brown*, 564 U.S. 915, 923 (2011) (*Goodyear*). As a general matter, due process requires that a defendant "not present within the territory of the forum" have "certain minimum contacts with [the forum] such that the maintenance of the suit does not offend traditional notions of fair play and substantial justice." *International Shoe Co.* v. *Washington*, 326 U.S. 310, 316 (1945) (citation and internal quotation marks omitted). The nature and quality of contacts needed for a State's exercise of personal jurisdiction to satisfy due process depend on whether the state court is exercising specific jurisdiction, *i.e.*, the limited authority to decide a particular suit, or general jurisdiction, *i.e.*, the authority to adjudicate any and all matters involving the defendant. See *Helicopteros Nacionales de Colombia, S.A.* v. *Hall*, 466 U.S. 408, 414 & nn.8-9 (1984).

This case concerns only general jurisdiction. A state court may exercise general personal jurisdiction over a corporation only when the State is its place of incorporation or its principal place of business, or the corporation's contacts with the State are otherwise so "continuous and systematic" that the defendant is "essentially at home" in that State. *Goodyear*, 564 U.S. at 919; see *Daimler AG* v. *Bauman*, 134 S. Ct. 746, 760 (2014).

2. Petitioner is an interstate freight railroad network. Pet. App. 17a. It is incorporated in Delaware and maintains its principal place of business in Texas. *Id.* at 39a, 48a. It operates railroad lines in 28 States, including Montana. *Id.* at 39a. In Montana, petitioner operates approximately 2700 miles of railroad track (6% of its total mileage), employs approximately 2100 employees (5% of its total payroll), and obtains "less than 10%" of its total revenues. *Id.* at 17a, 63a; J.A. 26-27, 37-41. Further, petitioner's operations in some of the other 27 States in which it operates are "far greater" than its operations in Montana. Pet. App. 38a.

Respondents are Robert Nelson and the administrator of the estate of Brent Tyrrell. Nelson and Tyrrell both worked for petitioner in States other than Montana. Pet. App. 2a. Nelson, a North Dakota resident, alleged that he sustained knee injuries while working for petitioner in Washington State. *Id.* at 3a, 36a. The administrator of Tyrrell's estate (his wife), who is a South Dakota resident, alleges that Tyrrell was exposed to carcinogenic chemicals while working in States other than Montana and that the chemical exposure caused his premature death. *Id.* at 3a, 42a, 49a.

3. Respondents each filed suit against petitioner in Montana state court, bringing claims under the FELA

for injuries sustained while working for petitioner. Pet. App. 2a. Respondents argued that the state courts have general personal jurisdiction over petitioner based on its operations in Montana. *Id.* at 3a-4a, 38a, 63a-64a.[1] Petitioner moved to dismiss both cases on the ground that due process does not permit the state courts to exercise general personal jurisdiction over it. *Id.* at 36a, 47a-48a.

Two state trial courts reached opposite conclusions on the personal-jurisdiction issue. In Nelson's case, the trial court granted petitioner's motion to dismiss, Pet. App. 36a-40a, reasoning that it could not exercise general personal jurisdiction over petitioner because petitioner is not "essentially at home" in Montana, *id.* at 38a-40a (relying on *Daimler*). Nelson appealed.

In Tyrrell's case, the trial court denied petitioner's motion to dismiss, Pet. App. 47a-73a, concluding that what it characterized as petitioner's "substantial, continuous and systematic activities within Montana" make it subject to general personal jurisdiction, *id.* at 55a; see *id.* at 64a. The court certified its decision as final, *id.* at 41a-46a, and the Montana Supreme Court accepted petitioner's appeal, *id.* at 34a-35a. The Montana Supreme Court then consolidated the two cases. *Id.* at 2a.

4. The Montana Supreme Court held that Montana courts may exercise general personal jurisdiction over petitioner in both cases because petitioner is doing business in Montana. Pet. App. 1a-19a.

---

[1] Respondents also argued that petitioner had consented to the state courts' exercise of personal jurisdiction over it. The Montana Supreme Court declined to address that argument, Pet. App. 19a n.3, and it is not before this Court.

The Montana Supreme Court first concluded that the FELA itself authorizes the state courts to exercise personal jurisdiction over petitioner. Pet. App. 5a-15a. The court relied on 45 U.S.C. 56, which provides in pertinent part:

> Under this chapter an action may be brought in a district court of the United States, in the district of the residence of the defendant, or in which the cause of action arose, or in which the defendant shall be doing business at the time of commencing such action. The jurisdiction of the courts of the United States under this chapter shall be concurrent with that of the courts of the several States.

The court read Section 56 as affirmatively authorizing state courts to exercise personal jurisdiction over a defendant anywhere that defendant does business. Pet. App. 6a-9a, 14a. The court also believed that decisions of this Court established that "railroad employees may bring suit under the FELA wherever the railroad is 'doing business.'" *Id.* at 12a; see *id.* at 6a-9a, 12a-13a. The court rejected the view that this Court's decision in *Daimler* limits the Montana courts' exercise of personal jurisdiction over petitioner; in the court's view, *Daimler* is inapposite because it "did not involve a FELA claim or a railroad defendant." *Id.* at 11a; see *id.* at 9a-12a.

The Montana Supreme Court then held that state law also authorizes the state courts to exercise personal jurisdiction over petitioner. Pet. App. 15a-19a. The court observed that Montana's long-arm statute permits its courts to exercise general personal jurisdiction over "[a]ll persons found within the state of Montana," Mont. R. Civ. P. 4(b)(1), and it concluded that petitioner is "found within" the State because it

has over 2000 miles of railroad track and over 2100 employees in Montana, Pet. App. 16a-17a. The court rejected petitioner's argument that the state courts' exercise of general personal jurisdiction under state law violated due process, again because it deemed *Daimler* inapposite. *Id.* at 17a-19a.

Justice McKinnon dissented. Pet. App. 20a-33a. In her view, the FELA does not address personal jurisdiction, and state law therefore is the source of the state courts' power to exercise personal jurisdiction over petitioner. *Id.* at 29a-30a. That exercise of state judicial power, she concluded, is inconsistent with the Fourteenth Amendment's Due Process Clause because petitioner is not "essentially at home" in Montana. *Id.* at 20a (citations omitted); see *id.* at 23a-25a.

SUMMARY OF ARGUMENT

The Montana Supreme Court held that the State's trial courts may exercise general personal jurisdiction over a railroad defendant in Montana when the plaintiff brings a claim under the Federal Employers' Liability Act, 45 U.S.C. 51 *et seq.*, and the defendant is doing business in the State. That is true, the court held, even when the plaintiff is not a resident of Montana; the FELA cause of action arose outside of Montana; and the defendant is not incorporated, headquartered, or otherwise essentially at home in Montana. The Montana Supreme Court erred.

I. The Montana Supreme Court mistakenly interpreted the FELA to confer on state courts the authority to exercise personal jurisdiction over any defendant doing business in the State. To authorize an exercise of personal jurisdiction, the FELA itself would have to make the defendant amenable to service of process. But the relevant provision of the FELA, 45

U.S.C. 56, says nothing about service of process in state courts. Instead, it prescribes rules for venue in federal district court and provides that state and federal courts have concurrent subject-matter jurisdiction over FELA actions. Section 56's drafting history confirms that Congress intended to address only venue and subject-matter jurisdiction when it enacted the language at issue. The Montana Supreme Court based its contrary holding on four of this Court's decisions, but none of them held that Section 56 affirmatively authorizes a state court to exercise personal jurisdiction over any defendant doing business in the State.

Although the FELA does not itself authorize the state courts to exercise personal jurisdiction in this case, the Montana Supreme Court held (and petitioner does not dispute) that the state long-arm statute does. The state courts' exercise of personal jurisdiction based on the state long-arm statute is subject to review under the Due Process Clause of the Fourteenth Amendment.

II. The Montana Supreme Court erred in concluding that the Fourteenth Amendment's Due Process Clause permits Montana state courts to exercise personal jurisdiction over petitioner. This case concerns only general personal jurisdiction. As this Court has explained, a state court may exercise general personal jurisdiction over an out-of-state corporation "only when the corporation's affiliations with the State in which suit is brought are so constant and pervasive 'as to render [it] essentially at home in the forum State.'" *Daimler AG* v. *Bauman*, 134 S. Ct. 746, 751 (2014) (brackets in original) (quoting *Goodyear Dunlop Tires Operations, S.A.* v. *Brown*, 564 U.S. 915, 923 (2011)).

The Montana Supreme Court deemed that due-process rule inapplicable, but its reasons lack merit.

Under *Goodyear* and *Daimler*, the Montana state courts may not exercise general personal jurisdiction over petitioner. Petitioner is not incorporated in Montana; it does not have its principal place of business in Montana; and it is not essentially at home in Montana. The Montana Supreme Court premised its due-process holding on the fact that petitioner does substantial and continuous business in Montana. But this Court has rejected the view that doing business in a State is sufficient to subject a corporate defendant to general personal jurisdiction in the State's courts. The judgment of the Montana Supreme Court should be reversed.

ARGUMENT

I. THE FEDERAL EMPLOYERS' LIABILITY ACT DOES NOT CONFER AUTHORITY ON STATE COURTS TO EXERCISE PERSONAL JURISDICTION OVER ANY DEFENDANT DOING BUSINESS IN THE STATE

The first requirement for a state court to exercise personal jurisdiction over a defendant is that the defendant is amenable to service of process, either because the defendant consents or because a law provides for such process. Contrary to the view of the Montana Supreme Court, the FELA does not itself provide for service of process in state courts. Accordingly, the state courts' exercise of personal jurisdiction in this case is based only on state law, and not on federal law.

A. The Text Of Section 56 Does Not Affirmatively Authorize A State Court To Assert Personal Jurisdiction Over A Defendant

1. A court may exercise personal jurisdiction over a defendant in a civil action only when "the procedural requirement of service of summons" is satisfied. *Omni Capital Int'l, Ltd.* v. *Rudolf Wolff & Co.*, 484 U.S. 97, 104 (1987). A "summons" is a document that commences a legal action and requires the defendant to appear and answer, and "service of summons" is the procedure by which that document is delivered to the defendant. See, *e.g.*, *Black's Law Dictionary* 1576, 1665 (10th ed. 2014).[2] Through service of summons, "a court having venue and jurisdiction of the subject matter of the suit asserts jurisdiction over the person of the party served." *Mississippi Publishing Corp.* v. *Murphree*, 326 U.S. 438, 444-445 (1946).

Absent consent, service of summons may be effectuated only if applicable law makes the defendant "amenab[le] to service of summons" by affirmatively "authoriz[ing] * * * service of summons on the defendant." *Omni*, 484 U.S. at 104. That authorization typically takes the form of a statute or rule that expressly provides for service of process. *Id.* at 104-105. In *Omni*, for example, this Court rejected the view that a provision of the Commodity Exchange Act that did not expressly address service of process "implicit-

---

[2] "Service of summons" refers to service of a particular type of document, whereas "service of process" refers more broadly to service of several different types of documents. See *Black's Law Dictionary* 1399, 1576, 1665; see also Fed. R. Civ. P. 4, 4.1. "Service of summons" and "service of process" often are used interchangeably; when used in this brief, both refer to service of a document to bring a defendant into court to answer a lawsuit.

ly" authorized nationwide service of process for claims brought in federal court under that statute. *Id.* at 103; see 7 U.S.C. 25(c) (1982). Remarking that "Congress knows how to authorize nationwide service of process when it wants to provide for it," the Court declined to read such a provision into an otherwise silent federal statute. *Omni*, 484 U.S. at 106.

2. The question here is whether the FELA itself provides for service of summons. The relevant provision of the FELA is Section 56, which provides in pertinent part:

> Under this chapter an action may be brought in a district court of the United States, in the district of the residence of the defendant, or in which the cause of action arose, or in which the defendant shall be doing business at the time of commencing such action. The jurisdiction of the courts of the United States under this chapter shall be concurrent with that of the courts of the several States.

45 U.S.C. 56.[3] This language does two things: it specifies the federal judicial districts in which venue is proper, and it authorizes concurrent state and federal subject-matter jurisdiction over FELA actions. It does not address personal jurisdiction because it does not set out a "means of bringing the defendant before the court." *Mississippi Publishing Corp.*, 326 U.S. at 445.

The first sentence of Section 56 quoted above "establishes venue for an action in the federal courts." *Baltimore & Ohio R.R.* v. *Kepner*, 314 U.S. 44, 52

---

[3] Section 56 also includes a statute-of-limitations provision not at issue here. See 45 U.S.C. 56 ("No action shall be maintained under this chapter unless commenced within three years from the day the cause of action accrued.").

(1941); see, *e.g.*, *Ex parte Collett*, 337 U.S. 55, 60 (1949) (Section 56 "defines the proper forum" for a federal FELA action). That language says nothing about state courts, instead referring only to a "district court of the United States," meaning a federal district court. See *Southland Corp.* v. *Keating*, 465 U.S. 1, 29 n.18 (1984) (explaining that "courts of the United States" is a "term of art" meaning federal courts). And the sentence provides rules for venue, not personal jurisdiction. It defines where an action "may be brought," language typically used to designate venue. *Kepner*, 314 U.S. at 56 (Frankfurter, J., dissenting) (citations omitted) (noting that "[t]he phrasing of [Section 56] is not unique: it follows the familiar pattern generally employed by Congress in framing venue provisions," and providing examples).

The next sentence of Section 56 likewise does not address personal jurisdiction. As this Court has recognized, it addresses subject-matter jurisdiction. See *Mondou* v. *New York, New Haven & Hartford R.R. (Second Employers' Liability Cases)*, 223 U.S. 1, 55-56 (1912). The sentence says that state courts have "concurrent" jurisdiction "under this chapter," meaning that both state and federal courts have jurisdiction over a particular type of action—a FELA action. The sentence says nothing about a court's power over a defendant, as opposed to the power to hear a certain type of case.

3. The Montana Supreme Court erred in interpreting Section 56's text to address personal jurisdiction. The court read the reference to "concurrent" jurisdiction to refer to both subject-matter jurisdiction and personal jurisdiction. Pet. App. 14a. But "[t]he phrase 'concurrent jurisdiction' is a well-known term of art

long employed by Congress and courts to refer to subject-matter jurisdiction." *Id.* at 30a (McKinnon, J., dissenting) (citing statutes and cases); see *Black's Law Dictionary* 980 (first definition); see also Pet. Br. 38 (providing examples in various federal statutes).

In order to affirm the Montana Supreme Court's view that Section 56 authorizes a state court to exercise personal jurisdiction over any defendant doing business in the State, the Court would have to conclude that both the venue sentence and the subject-matter-jurisdiction sentence refer to personal jurisdiction in state courts. But such an interpretation would override the venue sentence's limitation to federal courts, and it would confuse the concepts of personal jurisdiction, subject-matter jurisdiction, and venue. Personal jurisdiction is a court's power to exercise control over a defendant. See *Leroy* v. *Great W. United Corp.*, 443 U.S. 173, 180 (1979); *Black's Law Dictionary* 982. It is different from a court's power to hear a certain type of action (subject-matter jurisdiction) and the appropriate place for the action to proceed (venue). See *Black's Law Dictionary* 983, 1790. The most natural reading of Section 56 is that it addresses only venue and subject-matter jurisdiction, and not personal jurisdiction. See, *e.g.*, *Barrett* v. *Union Pac. R.R.*, 361 Or. 115, 128-129 (2017) (analyzing Section 56's text and concluding that it does not address personal jurisdiction); *State ex rel. Norfolk S. Ry. Co.* v. *Dolan*, No. SC95514, 2017 WL 770977, at *6-*7 (Mo. Feb. 28, 2017) (same).

4. Congress's failure to mention service of process in Section 56 is telling. When Congress wishes to provide for service of process, it knows how to do so. As the Court recognized in *Omni*, 484 U.S. at 103-106,

many federal statutes provide for nationwide service of process. See, *e.g.*, 15 U.S.C. 22 (Clayton Act); 15 U.S.C. 53 (Federal Trade Commission enforcement action); 15 U.S.C. 77v(a) (Securities Act of 1933); 15 U.S.C. 78aa(a) (Securities Exchange Act of 1934); 18 U.S.C. 1965(d) (Racketeer Influenced and Corrupt Organizations Act); 29 U.S.C. 1132(e)(2) (Employee Retirement Income Security Act of 1974); 31 U.S.C. 3732 (False Claims Act). Although the precise formulations vary, these statutes generally use language addressing how "process" (or a "summons") may be "served." *Ibid.*

Indeed, Congress used such language when it enacted the Clayton Act in 1914, just four years after it added the language at issue here to the FELA. In the Clayton Act, Congress expressly addressed both venue and personal jurisdiction, providing: "That any suit, action, or proceeding under the antitrust laws against a corporation may be brought not only in the judicial district whereof it is an inhabitant, but also in any district wherein it may be found or transacts business; and *all process in such cases may be served in the district of which it is an inhabitant, or wherever it may be found.*" Clayton Act, ch. 323, § 12, 38 Stat. 736 (emphasis added) (current version codified at 15 U.S.C. 22). That text confirms that Congress typically uses different language to address venue and personal jurisdiction, and that the way Congress authorizes an exercise of personal jurisdiction is by making a defendant amenable to service of process, not by remaining "silent as to service of process." *Omni*, 484 U.S. at 106.

B. The History Of Section 56 Confirms That The Provision Does Not Address Personal Jurisdiction

Section 56's drafting history confirms that it was designed to address only venue and subject-matter jurisdiction, not personal jurisdiction. When the FELA was originally enacted, it did not address either venue or subject-matter jurisdiction. Instead, Section 6 of the Act (the provision codified at 45 U.S.C. 56) contained only a statute of limitations. Act of Apr. 22, 1908, ch. 149, § 6, 35 Stat. 66. Shortly thereafter, two issues arose that led Congress to amend Section 56.

1. The first issue was that venue for FELA actions was too limited. Because the original FELA contained no venue provision, the general federal venue statute applied in FELA cases. *Kepner*, 314 U.S. at 49. That statute "fixed the venue of [federal-question] suits in the United States courts * * * in districts of which the defendant was an inhabitant," thereby requiring injured railroad employees to "go to the possibly far distant place of habitation of the defendant" to bring a FELA action. *Ibid.*; see Act of Aug. 13, 1888, ch. 866, § 1, 25 Stat. 434 (U.S. Comp. Stat. 1901, at 508).

Congress added a venue provision to Section 56 to address that concern. It read: "Under this Act an action may be brought in a circuit court of the United States, in the district of the residence of the defendant, or in which the cause of action arose, or in which the defendant shall be doing business at the time of commencing such action." Act of Apr. 5, 1910 (1910 Act), ch. 143, § 1, 36 Stat. 291.[4] The legislative history explained that this sentence was added to expand the

---

[4] Congress later substituted "district court" for "circuit court" in this provision. Act of Mar. 3, 1911, ch. 231, § 291, 36 Stat. 1167.

available venues for FELA actions brought in federal court. The House Report cited two federal decisions interpreting the federal venue statute, then explained that the amendment was designed "to make it unnecessary for an injured plaintiff to proceed only in the jurisdiction in which the defendant corporation is an 'inhabitant.'" H.R. Rep. No. 513, 61st Cong., 2d Sess. 6 (1910) (House Report) (citing *Macon Grocery Co.* v. *Atlantic Coast Line R.R.*, 215 U.S. 501 (1910) (freight tariff case), and *Cound* v. *Atchison, T. & S.F. Ry. Co.*, 173 F. 527 (C.C.W.D. Tex. 1909) (FELA case)). The Senate Report adopted the House Report's discussion of the amendment's purpose. S. Rep. No. 432, 61st Cong., 2d Sess. 3-5 (1910) (Senate Report). Neither Report said anything about personal jurisdiction. And when this Court recounted the history of this amendment in *Kepner*, it also concluded that the amendment was intended to address venue in the federal courts. See 314 U.S. at 49-50. The Court made no mention of personal jurisdiction in the state courts.

2. The second issue that arose shortly after the FELA's enactment was whether state courts had the power and obligation to hear FELA claims. In 1909, the Connecticut Supreme Court held that Congress intended to limit FELA claims to the federal courts and that States had no obligation to enforce FELA rights. *Hoxie* v. *New York, N. H. & H. R. Co.*, 73 A. 754, 759-760, 762. Congress responded by adding language to Section 56 confirming that state and federal courts have concurrent jurisdiction over FELA actions: "The jurisdiction of the courts of the United States under

this Act shall be concurrent with that of the courts of the several States." 1910 Act § 1, 36 Stat. 291.[5]

The House and Senate Reports explained that this amendment corrected the "erroneous" view of the Connecticut Supreme Court that a "state court is not authorized and required to enforce federal statutes." House Report 7, 11; Senate Report 5, 9; see 45 Cong. Rec. 2253-2254 (1910) (statement of Rep. Sterling); 45 Cong. Rec. at 3995 (statement of Sen. Borah). The Reports explained that, although state and federal courts always had concurrent subject-matter jurisdiction over FELA actions, "no harm can come" from "an express declaration that there is no intent on the part of Congress to confine remedial actions brought under the employers' liability act to the courts of the United States." House Report 7; Senate Report 5. In explaining the need for the amendment, the Reports discussed only jurisdiction over the subject matter—"cases arising under the act" or "remedial actions brought under the employers' liability act," *ibid.*—and not jurisdiction over the defendant. In the *Second Employers' Liability Cases*, this Court reviewed that history and concluded that the 1910 amendment was intended to "emphasize[]" what was already true—that federal courts do not have exclusive subject-matter jurisdiction over FELA actions. 223 U.S. at 56.

---

[5] Congress also provided that "no case arising under this Act and brought in any state court of competent jurisdiction shall be removed to any court of the United States." 1910 Act § 1, 36 Stat. 291; see *Miles* v. *Illinois Cent. R.R.*, 315 U.S. 698, 703 (1942) (addressing history of this language in the House and Senate). In 1948, Congress moved that language from Section 56 to 28 U.S.C. 1445(a). See Act of June 25, 1948, ch. 646, §§ 1, 18, 62 Stat. 939, 989.

3. According to the Montana Supreme Court, Congress's key concern in amending the FELA in 1910 was to ensure that a plaintiff could bring a FELA suit in "the state in which he regularly resides" so he would not have to "travel far from home to bring suit against the railroad." Pet. App. 14a; see Br. in Opp. 18-20. As an initial matter, such a reading of Section 56 would not assist respondents; neither of them is a Montana resident. Pet. App. 3a, 48a. In any event, the argument is mistaken, because Section 56 says nothing about the residence of the *plaintiff*. See 45 U.S.C. 56. The venue provision (which does not address personal jurisdiction) refers only to places where the *defendant* resides or is doing business (or where the cause of action arose).

Indeed, a proposal was made in 1910 to permit a plaintiff to bring suit in "the district of the residence of either the plaintiff or the defendant," the district where the cause of action arose, or the district where the defendant may be found. *Kepner*, 314 U.S. at 50 (citation omitted). But Congress rejected that proposal, apparently over concern that "so wide a choice might result in injustice to the carrier." *Ibid.*; see 45 Cong. Rec. at 2253 (statement of Rep. Sterling); 45 Cong. Rec. at 2257 (statement of Rep. Burke). A similar proposal was considered and rejected in 1947. See H.R. 1639, 80th Cong., 1st Sess. 1-2; see also *Pope* v. *Atlantic Coast Line R.R.*, 345 U.S. 379, 386-387 (1953) (recounting history of that proposal in the House and Senate). And those proposals addressed only venue, not personal jurisdiction.

The Montana Supreme Court also relied (Pet. App. 7a) on a statement by Senator Borah, who described the 1910 venue amendment as "enabl[ing] the plaintiff

to find the corporation at any point or place or State where it is actually carrying on business, and there lodge his action, if he chooses to do so." 45 Cong. Rec. at 4034. That description was accurate so far as it addressed venue. But Senator Borah was not purporting to address personal jurisdiction; he described the issue as one of "venue," both in the floor debate, *ibid.*, and in the Senate Report (which he authored), Senate Report 1, 3-4.

Relatedly, the Montana Supreme Court premised its statutory holding on the proposition that the FELA should be liberally interpreted in order to benefit injured railroad workers. Pet. App. 5a, 14a. Although that proposition could have force in cases of statutory ambiguity, here Section 56's text and history refute the suggestion that Congress intended in Section 56 to override the regular rules for service of process in the state courts. Accordingly, nothing in the drafting history of Section 56 suggests that Congress intended to authorize state courts to exercise personal jurisdiction over FELA defendants in any States where they do business.

C. This Court's Decisions Do Not Hold That Section 56 Affirmatively Authorizes A State Court To Exercise Personal Jurisdiction Over A Defendant Doing Business In The State

1. The Montana Supreme Court read four decisions of this Court as supporting its statutory interpretation. Pet. App. 6a-9a, 12a-13a. None of those decisions held that Section 56 itself authorizes a state court to exercise personal jurisdiction over a defendant doing business in the State.

a. In *Denver & Rio Grande Western Railroad* v. *Terte*, 284 U.S. 284 (1932) (cited at Pet. App. 12a-13a),

the Court considered whether two railroads could be sued in Missouri state court under the FELA when the plaintiff was injured in Colorado and neither railroad was incorporated in Missouri. 284 U.S. at 285-286. The railroads' argument was premised on the Commerce Clause; they argued (under then-applicable precedent) that the Missouri suit would unduly burden interstate commerce. *Id.* at 285. This Court agreed with respect to the Rio Grande railroad (which was not doing business in Missouri) but disagreed with respect to the Santa Fe railroad (which was doing business in Missouri). *Id.* at 286-287. The Court grounded its holding on two Commerce Clause decisions—*Hoffman* v. *Missouri ex rel. Foraker*, 274 U.S. 21 (1927), and *Michigan Central Railroad* v. *Mix*, 278 U.S. 492 (1929)—not on an interpretation of Section 56. See *Terte*, 284 U.S. at 287.

The Court noted that the railroads had made a second argument in the state court in *Terte*: that permitting the Missouri suit to proceed would violate their Fourteenth Amendment due-process rights. See 284 U.S. at 285. But the Court did not separately address that argument in its opinion.[6] Rather, its holding that "Santa Fe was properly sued in Jackson County" was based on "the doctrine approved in * * * *Foraker*," a Commerce Clause case. *Id.* at 287. Moreover, even if the Court's decision were read to reject Santa Fe's due-process objection to the suit (under then-prevailing

---

[6] The due-process issue was not included in the questions presented in the certiorari petition in *Terte*. See Pet. at 6-8, *Terte*, *supra* (No. 130). Although petitioners addressed the due-process issue elsewhere in their petition, see *id.* at 9, 17-20, respondent contended that the issue was not properly before the Court, see Br. in Opp. at 21-22, *Terte*, *supra* (No. 130).

due-process standards), it would not stand for the proposition that the FELA affirmatively authorizes a state court to exercise personal jurisdiction over a defendant doing business in the State, because the Court said nothing about Section 56.

b. *Baltimore & Ohio Railroad* v. *Kepner*, *supra* (cited at Pet. App. 6a-7a, 12a), likewise does not support the Montana Supreme Court's holding. The question in *Kepner* was whether a state court could invoke its general equitable powers to enjoin a FELA suit brought in federal court in a different State on the ground that the federal suit was inconvenient to the railroad. 314 U.S. at 47. The Court said no. It explained that Section 56 expressly provides for venue in the specified federal district courts, *id.* at 49-50, 52, and concluded that a state court may not override that provision, *id.* at 53-54.

The Montana Supreme Court relied on *Kepner*'s statement that Section 56 permits a plaintiff "to find the corporation at any point or place or State where it is actually carrying on business, and there lodge his action." Pet. App. 7a (quoting *Kepner*, 314 U.S. at 50, which in turn quoted 45 Cong. Rec. at 4034 (statement of Sen. Borah)). But the context makes clear that the Court was referring only to venue. *Kepner*, 314 U.S. at 49, 50, 52, 53, 54 (consistently defining the issue as one of "venue"). The Court's opinion said nothing about the separate question of personal jurisdiction.

c. The same is true of the Court's decision in *Miles* v. *Illinois Central Railroad*, 315 U.S. 698 (1942) (cited at Pet. App. 7a-9a). *Miles* addressed whether a state court could invoke its equitable powers to enjoin a FELA suit brought in a different state court on inconvenience grounds. 315 U.S. at 699. This Court said

no, explaining that Section 56 authorizes concurrent state and federal jurisdiction over FELA cases, and so plaintiffs have a "right to sue in state courts of proper venue where their jurisdiction is adequate." *Id.* at 704. Again, the Court's opinion referred repeatedly to venue, *e.g.*, *id.* at 701, 702, 703, 704, and did not address personal jurisdiction.

The Montana Supreme Court relied on the *Miles* Court's statement that "Congress has * * * permit-t[ed] suits in state courts, despite the incidental burden, where process may be obtained on a defendant" doing business in those States. Pet. App. 9a (quoting *Miles*, 315 U.S. at 702). That language was dicta: it concerned a Commerce Clause objection that the Court said was not actually presented in the case. *Miles*, 315 U.S. at 701-702. Further, the Court did not say that Section 56 authorizes state court assertions of personal jurisdiction. To the contrary: it said that a plaintiff may bring a FELA suit "where process may be obtained," *id.* at 702, *i.e.*, where state law permits service of process.

d. *Pope* v. *Atlantic Coast Line Railroad*, *supra*, raised essentially the same issue as *Miles*. The railroad argued that one state court should be permitted to enjoin a FELA action brought in another state court because, following the enactment of 28 U.S.C. 1404(a) in 1948, one federal district court could transfer a FELA case to another federal district court. 345 U.S. at 381, 383. This Court disagreed, explaining that Section 1404(a) "does not speak to state courts," and so the holding of *Miles* applied. *Id.* at 383-384. Again, the Court said nothing about personal jurisdiction.

The Montana Supreme Court relied on *Pope*'s statement that Section 56 "establishes a [plaintiff's] right

to sue in Alabama" because the defendant railroad did business there. Pet. App. 8a (quoting *Pope*, 345 U.S. at 383). But that discussion (which cited *Miles*) was about how a plaintiff has a right to proceed in state court under the FELA, not about the state courts' service-of-process authority. *Pope*, 345 U.S. at 383.

2. To the extent that this Court's FELA cases address service of process, they support the conclusion that the FELA was not intended to override state procedural rules. In the *Second Employers' Liability Cases*, the Court stated that in enacting the FELA, Congress was not "attempt[ing] * * * to enlarge or regulate the jurisdiction of state courts or to control or affect their modes of procedure." 223 U.S. at 56. Similarly, in *Miles*, the Court noted that a FELA plaintiff may bring suit in state court "where process may be obtained on a defendant," 315 U.S. at 702—not that the FELA itself authorized or provided for such process.

It is true that three of the decisions discussed above (*Terte*, *Miles*, and *Pope*) concerned FELA suits brought in state court in States where railroads were doing business but were not incorporated or headquartered. See *Pope*, 345 U.S. at 380-381; *Miles*, 315 U.S. at 699-700; *Terte*, 284 U.S. at 285-286; see also *McKnett* v. *St. Louis & S.F. Ry. Co.*, 292 U.S. 230, 230, 233-234 (1934) (cited at Br. in Opp. 16). The Montana Supreme Court relied on that fact as evidence that this Court understood Section 56 itself to authorize the state courts' exercises of personal jurisdiction in those cases. See Pet. App. 8a-9a, 12a-13a. But none of those cases held that Section 56 authorizes state courts to exercise personal jurisdiction, and the Court's failure to address personal jurisdiction is hardly telling, especially

because personal jurisdiction is a waivable defense. See *Ruhrgas AG* v. *Marathon Oil Co.*, 526 U.S. 574, 584 (1999); see also *Steel Co.* v. *Citizens for a Better Env't*, 523 U.S. 83, 91 (1998) (no weight given to "drive-by jurisdictional rulings").

It may well be that the Court in those cases believed that a state court hearing a FELA case could exercise personal jurisdiction over a defendant railroad doing business in the State. But that does not mean that the Court was of the view that Section 56, as opposed to state law, made the defendant amenable to summons. The decisions therefore do not support the Montana Supreme Court's reading of Section 56.

D. Montana Law, Not The FELA, Is The Source Of The Montana Courts' Authority To Assert Personal Jurisdiction Over Petitioner In This Case

Because the FELA does not itself authorize a state court to exercise personal jurisdiction over a defendant, the question becomes whether state law makes petitioner "amenab[le] to service of summons" (*Omni*, 484 U.S. at 104) in this case.

Montana's long-arm statute provides that a state court may exercise general jurisdiction over "[a]ll persons found within the state of Montana," Mont. R. Civ. P. 4(b)(1), and it defines "person" to include a "corporation," Mont. R. Civ. P. 4(a)(3). The Montana Supreme Court has held that a non-resident defendant is "found within" the State of Montana when it is "physically present in the state" or has "contacts with the state [that] are so pervasive that the party may be deemed to be physically present within the state." *Tackett* v. *Duncan*, 334 P.3d 920, 925 (2014). The Montana Supreme Court found that standard met in this

case. Pet. App. 16a-17a. Petitioner does not challenge that state-law holding.[7]

Because state law (rather than federal law) made petitioner amenable to service of summons in this case, the relevant constitutional limits on the courts' exercise of personal jurisdiction over petitioner are supplied by the Due Process Clause of the Fourteenth Amendment. See *Daimler AG* v. *Bauman*, 134 S. Ct. 746, 753 (2014). Accordingly, the remaining question, discussed below, is whether the state courts' assertion of personal jurisdiction over petitioner pursuant to the state long-arm statute violates due process under the Fourteenth Amendment.

II. THE MONTANA COURTS' ASSERTION OF GENERAL PERSONAL JURISDICTION OVER PETITIONER BASED ON THE STATE LONG-ARM STATUTE VIOLATES THE DUE PROCESS CLAUSE OF THE FOURTEENTH AMENDMENT

The second requirement that must be satisfied for a court to exercise personal jurisdiction over a defendant is that such exercise must comport with due process. This Court's decisions in *Goodyear* and *Daim-*

---

[7] For FELA cases brought in federal court, service of process generally is addressed by Federal Rule of Civil Procedure 4(k)(1)(A), which supplies the default rule for cases in which Congress has provided a federal cause of action but has not provided a special service-of-process rule. It limits the federal district court's exercise of personal jurisdiction to "the jurisdiction of a court of general jurisdiction in the state where the district court is located." Fed. R. Civ. P. 4(k)(1)(A). Accordingly, had this case been brought in federal district court in Montana, Montana's long-arm statute would have supplied the basis for exercising personal jurisdiction over the petitioner. See *Daimler AG* v. *Bauman*, 134 S. Ct. 746, 753 (2014).

ler set out the standards for determining when a state court's exercise of general personal jurisdiction satisfies due process. Applying those standards in this case, the Montana courts' exercise of personal jurisdiction over petitioner violates due process because petitioner is not incorporated in Montana, does not have its principal place of business in Montana, and is not otherwise essentially at home in Montana.

A. *Goodyear* And *Daimler* Define The Due-Process Constraints On State Courts' Exercise Of General Personal Jurisdiction Over Out-Of-State Defendants

1. A court's assertion of personal jurisdiction over a defendant "make[s] binding a judgment *in personam* against an individual or corporate defendant." *International Shoe Co.* v. *Washington*, 326 U.S. 310, 319 (1945). As a general matter, due process requires that a defendant "not present within the territory of the forum" have "certain minimum contacts with" the forum so that the assertion of personal jurisdiction is consistent with "traditional notions of fair play and substantial justice." *Id.* at 316 (citation omitted). That limitation on a court's authority "protects [a defendant's] liberty interest in not being subject to the binding judgments of a forum with which he has established no meaningful contacts, ties, or relations." *Burger King Corp.* v. *Rudzewicz*, 471 U.S. 462, 471-472 (1985) (citation and internal quotation marks omitted). That protection in turn allows potential defendants "to structure their primary conduct with some minimum assurance as to where that conduct will and will not render them liable to suit." *World-Wide Volkswagen Corp.* v. *Woodson*, 444 U.S. 286, 297 (1980).

In discussing the types of contacts that may permit a forum to exercise personal jurisdiction over a de-

fendant, the Court has distinguished between "specific jurisdiction" and "general jurisdiction." *Daimler*, 134 S. Ct. at 754 (citation omitted). Specific jurisdiction is the exercise of personal jurisdiction over a defendant "in a suit arising out of or related to the defendant's contacts with the forum." *Helicopteros Nacionales de Colombia, S.A.* v. *Hall*, 466 U.S. 408, 414 n.8 (1984). General jurisdiction, or all-purpose jurisdiction, is an exercise of personal jurisdiction over a defendant because of the defendant's connection to the forum. *Id.* at 414 n.9. In recent years, specific jurisdiction "has become the centerpiece of modern jurisdiction theory, while general jurisdiction [has played] a reduced role." *Daimler*, 134 S. Ct. at 755 (brackets in original) (quoting *Goodyear Dunlop Tires Operations, S.A.* v. *Brown*, 564 U.S. 915, 925 (2011)).

This case involves an exercise of general personal jurisdiction. See Pet. App. 2a, 19a. A state court may exercise general, all-purpose jurisdiction over an out-of-state defendant when the defendant's "affiliations with the State are so continuous and systematic as to render [the defendant] essentially at home in the forum State." *Goodyear*, 564 U.S. at 919 (internal quotation marks omitted). For a corporation, the "paradigm all-purpose forums"—the places the corporation is "at home"—are its "place of incorporation and principal place of business." *Daimler*, 134 S. Ct. at 760; see *Goodyear*, 564 U.S. at 924. Those places are "unique" and "easily ascertainable," and they "afford plaintiffs recourse to at least one clear and certain forum." *Daimler*, 134 S. Ct. at 760. But the Court acknowledged that, in an "exceptional case," a corporation's operations in a forum other than its place of incorporation or principal place of business "may be so

substantial and of such a nature as to render the corporation at home in that State." *Id.* at 761 n.19.

2. The Montana Supreme Court did not find that petitioner is at home in Montana under the Fourteenth Amendment standards set out in *Goodyear* and *Daimler*.[8] Instead, the court deemed those standards inapplicable for a number of reasons, none of which has merit.

First, the Montana Supreme Court stated that *Goodyear* and *Daimler* "did not involve a FELA claim or a railroad defendant," and concluded that this Court's FELA cases establish that "railroad employees may bring suit under the FELA wherever the railroad is 'doing business.'" Pet. App. 11a-12a. The court's analysis confuses the statutory question (whether the FELA itself affirmatively authorizes a state court to exercise personal jurisdiction) and the constitutional question (whether such an exercise violates due process). As explained above, the Montana Supreme Court was wrong on the statutory question; this Court's cases do not hold that the FELA authorizes service of process in state courts. See pp. 18-23, *supra*. But even if they did, that would not answer the separate due-process question. The cited decisions do not address due process, see *ibid.*; and such a decision would be of limited utility because the Court applied a different due-process standard at the time those cases were decided, see *Daimler*, 134 S. Ct. at 761 n.18.

Second, and relatedly, the Montana Supreme Court suggested that *Goodyear* and *Daimler* are inapposite

---

[8] There was "no dispute" in the courts below that petitioner's "affiliations with Montana are not so substantial as to render it essentially 'at home' in th[e] State." Pet. App. 23a (McKinnon, J., dissenting); see *id.* at 25a, 32a-33a (McKinnon, J., dissenting).

because they are Fourteenth Amendment cases, and this case involves an assertion of congressional power. Pet. App. 12a. But as explained above, the FELA does not address service of process in state courts, and so this case concerns an exercise of state power, rather than federal power. See pp. 8-24, *supra*; see also pp. 31-33, *infra* (explaining that there is no Fifth Amendment due-process issue in this case). Because the Montana courts are exercising only "the State's coercive power," the relevant limitation is "the Fourteenth Amendment's Due Process Clause." *Goodyear*, 564 U.S. at 918.

Third, the Montana Supreme Court noted that the facts of *Daimler* involved a foreign corporation and petitioner is a domestic corporation. Pet. App. 11a. But the Court's statement of its Fourteenth Amendment due-process holding applies to domestic corporations as well: "A court may assert general jurisdiction over foreign (*sister-state* or foreign-country) corporations to hear any and all claims against them when their affiliations with the State are so 'continuous and systematic' as to render them essentially at home in the forum State." *Goodyear*, 564 U.S. at 919 (emphasis added); see *Daimler*, 134 S. Ct. at 754. Further, the Court's reasoning does not depend on whether the corporation is foreign or domestic; it depends on the corporation's affiliations with the State. The point is that, without contacts sufficient to make the corporation at home in the State, it would be unfair to make the corporation answer for any and all claims against it in the State's courts. *Daimler*, 134 S. Ct. at 751; *Goodyear*, 564 U.S. at 918-919.

Finally, respondents suggest (Br. in Opp. 8-9) that *Daimler* is "beside the point" because the Montana

Supreme Court limited its holding to FELA claims and "did *not* hold that Montana state courts could exercise general jurisdiction" over petitioner. But the Montana Supreme Court stated its holding in terms of "general personal jurisdiction," Pet. App. 2a, 19a; see *id.* at 38a ("Plaintiff asserts that Montana has general, all-purpose jurisdiction of Defendant."), and it did not purport to analyze specific personal jurisdiction.[9]

B. The Montana Courts' Exercise Of General Personal Jurisdiction Over Petitioner Violates Due Process

1. The Montana courts' exercise of general personal jurisdiction over petitioner violates the Due Process Clause of the Fourteenth Amendment under the standards set out in *Goodyear* and *Daimler*. Petitioner is incorporated in Delaware. Pet. App. 3a, 39a. Petitioner's principal place of business (including its corporate headquarters) is in Texas. *Id.* at 39a. Petitioner is at home, and therefore subject to exercises of general personal jurisdiction, in those two States. *Daimler*, 134 S. Ct. at 760.

This is not an "exceptional case" (*Daimler*, 134 S. Ct. at 761 n.19) in which a corporation may be considered at home in a place other than its place of incorporation or principal place of business. This case, for example, is not like *Perkins* v. *Benguet Consolidated Mining Co.*, 342 U.S. 437 (1952) (discussed in *Daimler*, 134 S. Ct. at 755-756), where a company incorporated in

---

[9] The injured workers in this case did not reside in or work for petitioner in Montana. Accordingly, this case presents no question of whether a state court could exercise personal jurisdiction over a railroad if the State was the employee's place of residence and principal place of work in his ongoing employment relationship with the railroad, based on a work-related injury incurred while the employee was on assignment out of the State.

the Philippines temporarily moved its principal place of business to Ohio as a result of the Japanese occupation of the Philippines during World War II, *id.* at 447-448. Under those circumstances, the Court concluded that Ohio courts could exercise general personal jurisdiction over the company. *Id.* at 446-448. Here, unlike in *Perkins*, petitioner's principal place of business is in Texas, and there is no argument that petitioner has a surrogate headquarters in Montana.

2. The Montana Supreme Court concluded that petitioner is subject to general personal jurisdiction in Montana because it is "doing business" there. Pet. App. 12a. But "doing business" in a State does not make a corporation answerable for any and all claims against it in the State's courts. *Daimler*, 134 S. Ct. at 762. The "general jurisdiction inquiry does not focus solely on the magnitude of the defendant's in-state contacts," but instead "calls for an appraisal of a [defendant] corporation's activities in their entirety, nationwide and worldwide." *Id.* at 762 n.20 (brackets, citation, and internal quotation marks omitted).

Petitioner's affiliations with Montana are not so "constant and pervasive" as to render it essentially at home in the State. *Daimler*, 134 S. Ct. at 751. A comparison to *Daimler* is useful: Daimler's business activities in California were "substantial, continuous, and systematic," *id.* at 761 (citation omitted), generating billions of dollars in sales each year, *id.* at 766-767 (Sotomayor, J., concurring in the judgment). But this Court evaluated Daimler's California contacts in light of its much-larger global operations, *id.* at 762 n.20; noted that Daimler's California sales comprised only 2.4% of its worldwide total, *id.* at 752; and concluded that Daimler was not "at home" in California, *id.* at

762. Here, petitioner has significant and continuous business activities in Montana: it employs over 2100 people; operates over 2000 miles of track; owns real-estate; solicits business; engages in direct advertising; and transports many tons of coal, grain, and petroleum each year. Pet. App. 17a, 63a. But petitioner's operations in some of the other States in which it operates are greater than its Montana operations, and petitioner's Montana operations are a small percentage of its total operations. *Id.* at 17a, 38a, 63a. Petitioner's significant operations in Montana do not render it at home in that State. Accord *Barrett*, 361 Or. at 125; *Dolan*, No. SC95514, 2017 WL 770977, at *3-*5.

The Montana Supreme Court's approach resurrects a due-process standard that this Court has rejected. As this Court has explained, the fact that a corporation "engages in a substantial, continuous, and systematic course of business" in a State is not enough to permit that State's courts to exercise general, all-purpose jurisdiction over that defendant. *Daimler*, 134 S. Ct. at 761 (citation omitted); see *id.* at 762 n.20. The Montana Supreme Court erred in "[d]isregarding" *Goodyear* and *Daimler* in favor of a "formulation that [this Court] rejected." Pet. App. 20a (McKinnon, J., dissenting). When the correct standard is applied, it is clear that subjecting petitioner to general personal jurisdiction in the Montana courts would violate due process.

3. As a plurality of the Court correctly noted in *J. McIntyre Machinery, Ltd.* v. *Nicastro*, 564 U.S. 873 (2011), "personal jurisdiction requires a forum-by-forum, or sovereign-by-sovereign, analysis." *Id.* at 884. Because the United States is a distinct sovereign, a defendant may have sufficient aggregate contacts with

the Nation as a whole, or the requisite relationship with the United States, for purposes of personal jurisdiction, even though it does not have such contacts or the requisite relationship with a particular State. *Ibid.* Thus, Congress's express constitutional power over and special competence in matters of interstate and foreign commerce, in contrast to the limited and mutually exclusive sovereignty of the several States (see *ibid.*), enables Congress, consistent with the Fifth Amendment, to provide for the exercise of federal judicial power in ways that have no analogue at the state level. As noted above, for example, Congress has enacted numerous federal statutes providing for nationwide service of process in actions in federal court. See pp. 9-10, 12-13, *supra*. As in *Omni*, the Court has "no occasion" in this case to address any Fifth Amendment issues that might arise under such a statute. 484 U.S. at 103 n.5 (quoting *Asahi Metal Indus. Co.* v. *Superior Court of Cal.*, 480 U.S. 102, 113 n.* (1987) (opinion of O'Connor, J.)).

This case raises the additional wrinkle that the Montana Supreme Court interpreted Section 56 to authorize *state* courts to exercise personal jurisdiction over petitioner based on its interstate rail operations and employment relationship with the injured employees. If the FELA in fact did that, it would present additional questions about the nature and manner of exercising Congress's authority under the Commerce Clause to require a railroad engaged in interstate commerce to submit to state-court jurisdiction over such claims, and the due-process constraints on Congress doing so.[10] But there is no need to address

---

[10] The Montana Supreme Court did not address whether the due process constraints on a state service-of-process statute differ

any such questions here. Because state law, not the FELA, authorizes the state courts' exercise of personal jurisdiction in this case, the Due Process Clause of the Fourteenth Amendment defines the outer bounds of the state courts' authority. There is no need for this Court to go any further.

CONCLUSION

The judgment of the Supreme Court of Montana should be reversed.

Respectfully submitted.

NOEL J. FRANCISCO
Acting Solicitor General
CHAD A. READLER
Acting Assistant Attorney General
EDWIN S. KNEEDLER
Deputy Solicitor General
NICOLE A. SAHARSKY
Assistant to the Solicitor General
MICHAEL S. RAAB
JOSEPH F. BUSA
Attorneys

MARCH 2017

---

from the due process constraints on a federal service-of-process statute.

APPENDIX

1. U.S. Const. Amend. XIV provides in pertinent part:

* * * * *

No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

* * * * *

2. 45 U.S.C. 51 provides:

Liability of common carriers by railroad, in interstate or foreign commerce, for injuries to employees from negligence; employee defined

Every common carrier by railroad while engaging in commerce between any of the several States or Territories, or between any of the States and Territories, or between the District of Columbia and any of the States or Territories, or between the District of Columbia or any of the States or Territories and any foreign nation or nations, shall be liable in damages to any person suffering injury while he is employed by such carrier in such commerce, or, in case of the death of such employee, to his or her personal representative, for the benefit of the surviving widow or husband and children of such employee; and, if none, then of such employee's parents; and, if none, then of the next of kin dependent upon such employee, for such injury

or death resulting in whole or in part from the negligence of any of the officers, agents, or employees of such carrier, or by reason of any defect or insufficiency, due to its negligence, in its cars, engines, appliances, machinery, track, roadbed, works, boats, wharves, or other equipment.

Any employee of a carrier, any part of whose duties as such employee shall be the furtherance of interstate or foreign commerce; or shall, in any way directly or closely and substantially, affect such commerce as above set forth shall, for the purposes of this chapter, be considered as being employed by such carrier in such commerce and shall be considered as entitled to the benefits of this chapter.

3. 45 U.S.C. 56 provides:

Actions; limitation; concurrent jurisdiction of courts

No action shall be maintained under this chapter unless commenced within three years from the day the cause of action accrued.

Under this chapter an action may be brought in a district court of the United States, in the district of the residence of the defendant, or in which the cause of action arose, or in which the defendant shall be doing business at the time of commencing such action. The jurisdiction of the courts of the United States under this chapter shall be concurrent with that of the courts of the several States.

4. Fed. R. Civ. P. 4 provides in pertinent part:

Summons

* * * * *

(k) Territorial Limits of Effective Service.

(1) ***In General.*** Serving a summons or filing a waiver of service establishes personal jurisdiction over a defendant:

(A) who is subject to the jurisdiction of a court of general jurisdiction in the state where the district court is located;

(B) who is a party joined under Rule 14 or 19 and is served within a judicial district of the United States and not more than 100 miles from where the summons was issued; or

(C) when authorized by a federal statute.

* * * * *

5. Mont. R. Civ. P. 4 provides in pertinent part

Persons Subject to Jurisdiction; Process; Service.

(a) Definition of Person. As used in this rule, the word "person," whether or not a citizen of this state, a resident of this state, or organized under the laws of this state, includes:

(1) an individual, whether operating in the individual's own name or under a trade name;

(2) an individual's agent or personal representative;

(3) a corporation;

(4) a limited liability company;

(5) a business trust;

(6) an estate;

(7) a trust;

(8) a partnership;

(9) an unincorporated association;

(10) any two or more persons having a joint or common interest or any other legal or commercial entity; and

(11) any other organization given legal status as such under the laws of this state.

(b) Jurisdiction of Persons.

(1) Subject to Jurisdiction. All persons found within the state of Montana are subject to the jurisdiction of Montana courts. Additionally, any person is subject to the jurisdiction of Montana courts as to any claim for relief arising from the doing personally, or through an employee or agent, of any of the following acts:

(A) the transaction of any business within Montana;

(B) the commission of any act resulting in accrual within Montana of a tort action;

(C) the ownership, use, or possession of any property, or of any interest therein, situated within Montana;

(D) contracting to insure any person, property, or risk located within Montana at the time of contracting;

(E) entering into a contract for services to be rendered or for materials to be furnished in Montana by such person;

(F) acting as director, manager, trustee, or other officer of a corporation organized under the laws of, or having its principal place of business within, Montana; or

(G) acting as personal representative of any estate within Montana.

(2) Acquisition of Jurisdiction. Jurisdiction may be acquired by Montana courts over any person:

(A) through service of process as herein provided; or

(B) by the voluntary appearance in an action by any person either personally or through an attorney, authorized officer, agent, or employee.

* * * * *